

By: Lucio

S.B. No. 722

A BILL TO BE ENTITLED

AN ACT

relating to requiring counseling before closing certain home loans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 343, Finance Code, is amended by adding Section 343.103 to read as follows:

Sec. 343.103. COUNSELING REQUIRED BEFORE CLOSING CERTAIN HOME LOANS. (a) This section applies to a home loan that:

(1) has a variable interest rate;

(2) has a prepayment penalty;

(3) permits the payment of interest only;

(4) permits periodic payments that are less than the amount of accrued interest on the scheduled payment date;

(5) does not require monthly payments to the lender or loan servicer for taxes and insurance; or

(6) provides for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments.

(b) A lender may not make a home loan to which this section applies for less than \$125,000 unless the loan applicant presents to the lender a certificate of completion of counseling signed by the counselor and the loan applicant that:

(1) establishes that, not later than the 10th day before the date of closing, the loan applicant received counseling in person or by phone from a housing counseling agency approved by

1 the United States Department of Housing and Urban Development or
2 from an attorney licensed to practice law in this state regarding
3 the advisability of a home loan to which this section applies and
4 the availability of financial alternatives; and

5 (2) includes a signed statement by the counselor that
6 the counselor has training or experience in home loans.

7 (c) The lender shall provide to the loan applicant and
8 counselor, before the applicant receives counseling as required by
9 Subsection (b), a written notice on a form prescribed by the finance
10 commission under Subsection (h) that states:

11 (1) the proposed terms of the loan; and

12 (2) that financial alternatives are available.

13 (d) If a home loan described by Subsection (b) is sold,
14 transferred, or assigned to another person, the lender or other
15 obligee, as applicable, shall transfer to that person any
16 certificate of completion of counseling provided to the lender
17 under Subsection (b).

18 (e) The holder of the home loan shall maintain in the
19 holder's records any certificate of completion of counseling
20 provided to the lender under Subsection (b).

21 (f) An attorney who counsels a loan applicant under
22 Subsection (b) may not represent or advise another party to the loan
23 or receive compensation or another benefit from a person other than
24 the loan applicant.

25 (g) The finance commission by rule may adopt a reasonable
26 fee that a person who provides counseling to a loan applicant under
27 this section may charge the loan applicant.

1 (h) The finance commission shall prescribe the form and
2 content of the:

3 (1) certificate of completion of counseling required
4 by Subsection (b); and

5 (2) notice required by Subsection (c).

6 (i) This section does not apply to an interim construction
7 loan with a maturity of less than 18 months.

8 (j) A violation of this section by a lender does not
9 invalidate or impair the lien or security interest for the loan.

10 (k) A violation of Subsection (b) or (c) by a lender is a
11 deceptive trade practice actionable under Subchapter E, Chapter 17,
12 Business & Commerce Code.

13 (l) The finance commission shall adopt rules to implement
14 this section.

15 SECTION 2. The change in law made by this Act applies only
16 to a loan closed on or after the effective date of this Act. A loan
17 closed before the effective date of this Act is covered by the law
18 in effect on the date the loan was closed, and the former law is
19 continued in effect for that purpose.

20 SECTION 3. Not later than December 31, 2009, the Finance
21 Commission of Texas shall adopt the rules required by Section
22 343.103(1), Finance Code, as added by this Act.

23 SECTION 4. This Act takes effect January 1, 2010, except
24 that Section 343.103(1), Finance Code, as added by this Act, takes
25 effect September 1, 2009.